

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**HENRY B. HARRIS,**

**Petitioner,**

**v.**

**Civil Action No. 5:07cv62  
(Judge Stamp)**

**THOMAS MCBRIDE, Warden,**

**Respondent.**

**ORDER DENYING APPOINTMENT OF COUNSEL**

The *pro se* petitioner initiated this case by filing a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody and an Application for the Appointment of Counsel. In support of his motion for appointed counsel, the petitioner asserts that he is indigent, that he is uneducated in the field of law, that interest and fairness necessitate the appointment of counsel, and because he believes that is entitled to relief.

The authority for the Court to appoint counsel in a § 2254 action is discretionary; there is no Constitutional right to have appointed counsel in post conviction proceedings. Pennsylvania v. Finley, 481 U.S. 551 (1987). A Court may appoint counsel to a financially eligible person if justice so requires in a § 2254 action. See 28 U.S.C. § 2254(h); 18 U.S.C. § 3006(A). Appointment of counsel for a petitioner who qualifies under 18 U.S.C. § 3006(A), is only required under § 2254 when necessary for utilization of discovery procedures and when an evidentiary hearing is required. See Rules 6(a) and 8(c) of the Rules Governing Section 2254 cases in the United States District Courts.

Upon a review of the file, the undersigned notes that the respondent has filed a motion to

dismiss the petition for the failure to exhaust state remedies. See dckt. 15. Thus, it does not appear that the issues in this case are complex; nor is the need for discovery or an evidentiary hearing readily apparent. Thus, the petitioner's Motion for the Appointment of Counsel (dckt. 3) is **DENIED.**

IT IS SO ORDERED.

The Clerk is directed to mail a copy of this Order to the *pro se* petitioner and to transmit a copy to counsel of record electronically.

DATED: November 15, 2007.

/s *John S. Kaull*

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE